SUMMARY
Virginia Housing Commission
Continuing Care Retirement Communities Sub-Workgroup
Senate Room A, General Assembly Building
September 5, 2012
1:30 PM

- **Senator George Barker,** *chair* called the meeting to order at 1:30 PM
- In addition to the invited speakers the following workgroup members were in
- attendance:
    - **Workgroup members:** Senator George L. Barker, Chair; Senator Mamie Locke, VHC Vice Chair; Bill Axselle, *Erickson Retirement Community*; Mary Lynne Bailey, *Virginia Health Care Association*; Al daCosta, *Virginia Baptist Homes Foundation Resident*; Chip Dicks, *Realtor Association*; Daryl Hepler, *State Corporation Commission*, Bureau of *Insurance;* Ron Herring, *Glebe Resident*; George High, *Westminster Resident*; H. Donald Nelson, *Windsor Meade Resident;* Dana Parsons, *Virginia Association Nonprofit Homes for the Aging;* Jim Rothrock, *Dept. of Rehabilitation Services*; A. Prescott Rowe, *Cedarfield Resident*; Peter T. Straub, *Greenspring Retirement Community*; Pia Trigiani, *Common Interest Communities Management Fund;* and Amy Marschean, *Department of Rehabilitation Services*
    - **Staff**: Elizabeth Palen, *VHC Director*

I. Welcome and Call to Order

- **Senator George Barker,** *Chair* called the meeting to order at 1:30PM
- **Sen. Barker:** This is the second meeting of the retirement community sub work group of the Housing Commission. We had a meeting in June, where we got issues out on the table and we discussed a number of things; and we decided we would have a second meeting today; we will probably have a third meeting, probably sometime in October. The full Housing Commission is meeting in the middle of November and we want to present something to them, at that point. That is the timeframe that we are looking at in terms of coming up with suggestions and recommendations.
    - At the last meeting, there were two major themes; (1) one deals with information available in terms of the financial side of things and making sure that assets, are protected. The SCC will be presenting on how finiances are looked at and what types of information is disclosed and reported at this particular time.

- And then the second issue was the major issue that we dealt with was related to (2) governance issues, and in particular to the role of residents in governance matters as it relates to the CCRC. We will have a presentation today from a couple of members of the sub-work group on their perspectives as residents and how it relates to these issues. Mr. Herring and Mr. High will make presentations. We had hoped to have someone from the CCRC industry would add their perspective, but we were unable to have someone here at this particular meeting, and so we will hear them in October.

II. SCC Oversight

- **Mr. H Donald Nelson, Windsor Meade Resident:** I would welcome the opportunity to just review. At the last meeting I gave a brief summary of the issues for consideration for Windsor Meade and I think you have articulated those two; governance and finances. Our number one issue is still the same, no positive action has been taken to have a resident at Windsor Meade on the Board of Directors. A letter has been sent and it is in your folders today, it is to Ms. Palen from one of our residents. Also at the last meeting, a big white binder was handed out. It was a substantial binder. I hope you all took it home and read it cover to cover. It suggested that the communications between management and the residents at Windsor Meade is excellent. That is not a resident's perspective. Filing to the State of Virginia, for the fiscal year of May 31, 2011, were including in that activity and later this month, in September, the other filing for the last fiscal year of May 31, 2012, will be submitted to the State. And I think we are going to be hearing from some of those people today.
    - The residents of Windsor Meade will have access to this past financial information, in October. Updated preliminary financial information's, in a very summary form, for the fiscal year of May 31, 2012, have been received by the finance committee of Windsor Meade Resident Association. Just quickly in summary, our operating expenses exceed our operating revenue, our liabilities exceed our assets, and our cash is low. No explanation on how the bonds will be repaid is shown or known. Cumulative losses from operations and we started up in a tough time 2007 until now, that is $36 million. The complete filing will be made to the State by 9:30 and I think we are going to hear today who looks at those and analysis those. That's great!
    - A letter in late August to Senator Barker, Senator Locke and Ms. Palen with the subject Financial Structure that is also in our folder today, I think that will give you some insight to both our interest and our concerns. This letter outlined the documentation and action and legislation Windsor

Meade residents and probably residents of other CCRCs in Virginia want and need to be protected. I personally encourage the committee to strive to take legislative action to protect independent living as they have done in assisted living and nursing care residents in the State of Virginia and I have this for your file.

- **Senator Barker:** Thank you, any other comments or questions at this time? All right, then let's proceed to the presentation from the SCC and Ed Buyalos will be presenting, first.
- **Mr. Ed Buyalos,** *Chief Financial Auditor*: REFER TO THE SCC/BUREAU OF INSURANCE HANDOUT - I am Ed Buyalos with the Bureau of Insurance it is a pleasure to be here today. I am the Chief Financial Auditor at the Bureau of Insurance and my responsibilities include the licensing and registration of the companies that operate in Virginia. In addition, to monitoring those companies once they are in and all the financial analysis that is preform on those companies. I am happy to say I have with me Toni Janoski and Daryl Hepler who have the responsibility for the day to day oversight of CCRCs that operate in Virginia, between the two of them they have 29 years of experience working at the CCRCs. So, hopefully, between the three of us we will be able to answer your questions.
    - The SCC Bureau of Insurance has regulated CCRCs in Virginia since July 1, 1985. The statute that applies for regulatory over site for CCRCs by the Bureau of Insurance is Chapter 49 of Title 38.2 and since Chapter 49 was adopted in 1985, there have been very few changes to Chapter 49. I guess, the most substantial coming last year with a community based continuing care as the section that allows for services to be provided for individuals in the individuals own residents. Over sight in Virginia is primarily that of insuring proper disclosures by the CCRC, as well as monitoring the CCRCs financial condition.
    - There are currently 55 CCRCs registered in Virginia and as of today, all 55 are in good standing. There are no restrictions on any of our CCRCs currently.
    - Reviewing top of page 2 in the handout titled Regulation of CCRCs in Other States.
    - Reviewing chart at the bottom of page 2 titled Requirements in 38 States and the District of Columbia that Regulate CCRCs, which discusses the documents that are required to be disclosed in 38 states, as well as, in Virginia, with the primary document being the disclosure statement.
    - Virginia requires the disclosure statement, financial report, escrow of fees, resident's right to organize in an association, and resident's right to meet with management. It's a brief over view of what we have seen in various states that regulate CCRCs.

- **Mr. Toni Janoski,** *Senior Insurance Financial Analyst:* My name is Toni Janoski. And I am with the Virginia Bureau of Insurance. I have been reviewing CCRCs for approximately 12 years. I am going to go through, hopefully briefly, the list of the disclosure statement requirements, the resident's contract requirements. Chapter 49 of the Code of Virginia states what filings are required by the CCRC to be made to the SCC. The disclosure statement is to be prepared by the provider for the use and consideration of the residents and the perspective residents of the continuing care facility. I am going to begin with an overview of the types of filings that are made to the SCC.
    - Continuing with the SCC handout on top of page 3 titled: CCRC Filing Requirements in Virginia. It explains each filing requirement: i) Initial Registration; ii) Annual Disclosure Statement Filing; and iii) Amended Filings.
    - Proceeding to the bottom of page 3 titled: Composition of a Disclosure Statement. The body of the Disclosure Statement includes information required in 38.2-4902 in the Code of Virginia. A composition of a disclosure statement in Section A. Narrative requires: Information on the Continuing Care Provider; Ownership of property and buildings; Location and description of property; Affiliation with religious, charitable, or nonprofit organizations and information on tax exemptions; Description of services provided under continuing care contracts; Fees required of residents; Reserve funding; Admission of residents; Access to facility by nonresidents; and Information required for facilities under construction.
    - Composition of a Disclosure Statement continues on the top of page 4. Section B. Resident's Contract: 38.3-4905 requires the following items to be included in each continuing care contract: Continuing care provided to each resident; Details of values of property transferred by or for residents; Specific details of services to be provided to residents; Description of health and financial condition that may require resident to relinquish space; Description of health and financial condition required to continue as resident; Current fees if resident marries and terms concerning spouse's entry into facility; Description of good cause provision for cancelation of contract; Details of refund provisions; Terms for contract cancellation by death; Terms for a least 30 days advance notice before any changes in fees or services; Residents rights to rescind the contract; and the residents rights prior to occupying the facility.
    - Also including in the disclosure is the: Section C. Audited Financial Statements and Section D. Current Pro forma Income Statement. Daryl Hepler will go over the Financial Monitoring on the bottom of page 4.

- **Bill Axselle,** *Erickson Retirement Community***:** The disclosure statement to which you made reference cover the initial disclosure statement and also does it cover the annual update of that disclosure statement?
    - So every year, four months after the fiscal year, that is also updated and provided to you and by law to be provided to the residents.
    - **Mr. Janoski:** Exactly, it has to be provided by written notice to the resident at the same time.
- **Mr. Axselle:** And each of those documents dealing with the financial aspect are in a fashion that the accounting profession uses and has the information plus, has an opinion letter from the CPA?
    - **Mr. Janoski:** Yes, that is required to be with the filing.
- **Mr. Axselle:** That's part of filing the disclosure and what's made available to residents.
    - **Mr. Janoski:** Yes, it's in the initial filing, the annual filing it's open for public viewing in our office for us and for anyone else, and then all the residents are required to have access to this information.
- **Sen. Barker:** Just a quick follow up on one of the questions that Mr. Axselle asked. When information on the annual audit is received by the facility often there's a management letter or other types of things are those part of what is shared with the residents or is it just sort of a cover letter type of thing or all the documents?
    - **Mr. Janoski:** I have not seen where the management letter is filed with the disclosure statement. It is not a requirement.
- **Daryl Hepler,** *Virginia Bureau of Insurance*: I have been working with the SCC for 22 years. Seventeen years I have been working on CCRCs among other company types, so that is why Toni and I have a total of like 29 years together. I am going to be talking about Financial Monitoring which is on the bottom of page. The following items were discussed: A. SCC Authority; B. Orders and Penalties; and C. Examples.
    - Last matter is regarding Resident's Rights on the top of page 5, which discusses i) Residents have a right of self-organization, ii) Copies of submissions, iii) Quarterly meetings, iv) Free discussion of issues relating to the facility, and v) Change in chief executive officer or management firm. That concludes our presentation any questions?
- **Bill Axselle:** Am I correct in looking at the document that there are 55 CCRCs registered, in Virginia, and that started in 1985.
    - **Ms.Hepler:** Yes.
- **Bill Axselle:** Is it fair to conclude that there have been only for those 55 entities since 1985 there have only been the two instances where the SCC took the action that was described in your presentation.

- Daryl Hepler: They are the only two known cases of bankruptcy. The second case we did not issue an order.

- **Mr. Axselle:** Do you know of any instance in which a resident has had their contract rescinded because of financial instability of the CCRC?
    - **Ms. Hepler:** No, not in Virginia.
- **Sen**. **Barker:** Just to follow up on a couple of questions can you explain the rational for the suspension of entrance fees in one situation where you did have the consent decree, and the other where you were recommending it, but did not have a consent decree, as I understand it. It seems that to some extent that that would potentially undermine the fiscal situation at the facility and sort of the rational of how that was handled.
    - **Mr. Buyalos:** I think in the situation where the Virginia Domestic CCRC we took action before that facility was placed into bankruptcy, so in order to protect new residents from coming on board we did take action. In the second case it was a Maryland corporation and that was operating here. They were placed into bankruptcy and the bankruptcy court pretty much stopped them from taking new residents and we did get the company to consent here in Virginia to not write any new contracts, but we did not do that by order, because the bankruptcy court had already done that.
- **Sen. Barker:** And did not collecting the entrance fees, in either of those two situations, exasperate the problem in any way or how do you prevent a situation that is problematic in the first place, and the bankruptcy from getting worse?
    - **Mr. Buyalos:** No, we don't take that decision lightly because typically when a CCRC is having problems it's a problem with occupancy and really we are trying to protect the new residents and I know the current residents certainly are put in a tough position because they are working as hard as they can to increase occupancy and along comes an order that doesn't allow them to take any residents. Now there are certain options they have there where they can continue to allow people to come in on a monthly basis and not collect the entrance fee up front to try to meet fixed cost.
    - Our regulation of CCRCs is certainly when we compare it to the regulation insurance companies it certainly regulation light. I mean with the insurance companies we have lots of different means we can have them stop writing risky types of business or sell certain types of risky assets, we can give them 30 to 90 days to raise capital, issue a [inaudible] order, we can issue a suspension order that stops them from writing all together. If things get bad enough we actually put the company into receivership, we take control of the company we run the company our self. We look for a buyer to come in and buy the company and if all else fails

we can sell off pieces of the insurance company or we could liquidate the insurance company. So with insurance companies we have lots of options, with CCRCs in the past our option has been to protect those new residents who come in with the big entrance fees from joining the CCRC.

- **Sen. Barker:** In the two situations that you have had, that you described, looking back on those is there anything that could have been done to prevent those situations from getting to the point that they did is there anything in terms of additional tools or additional information that would have made a difference?
    - **Mr. Buyalos:** We always look back at that and especially the insurance companies you can look back and say junk bonds with the insurance companies we pass laws to eliminate junk bonds and all kind of…you know we look back at the Virginia CCRC there, if my recollection is correct, it was a problem where there were construction delays and the construction days shorten the period from the time residents moved in and the first interest of principals were due and combined with the economy and the housing market, looking back at it…I just you know, personally, I don't see how a feasibility study or anything like that would have foreseen construction delays or the economy or the housing crash. Also, when I read back about the big national company that went into bankruptcy, it too, it had a certain debt load and with the economy and housing pretty much caused its problems. Personally, I don't see what could have been done different.
- **Ron Herring,** The Glebe: Is there any relationship that you are aware of between the debt load and bankruptcy, notwithstanding the issues of a recession or a delay in construction, whatever those variables may be, but is there any relationship between a heavy debt load where a debt load could be too heavy that can't cover the initiation of the facility? In other words, does it affect the outcome, for example, in bankruptcy or in financial stress?
    - **Ed Buyalos:** It's my understanding, that the lenders put a lot of time and effort in reviewing feasibility studies and that type before they lend the funds so kind of from just looking through this GAO report it appears that the lenders put more restrictions on the CCRCs then the regulators due. They have higher reserve requirements and restriction in the loan documents then most regulators have; so the lenders seem to be the parties putting the biggest restrictions on the CCRCs. And even the local one here, it did have a sinking fund for its debt where the sinking fund they had to add each year to be able to retire the debt as it came due. So they did have provisions to reserve for the debt and it didn't work.
- **Peter Straub,** *Greenspring Retirement Community***:** You indicated that the insurance industry is much more highly regulated; do you have an opinion as to

whether or not people who are insured are better protected by all of the regulations than people who live in CCRCs with fewer regulations?

  - **Mr. Buyalos:** I will say that I think with the insurance industry it has had so many problems there has been a lot of changes and there's just so many tools for us to use, overall, there appears to have been much fewer problems with CCRCs. This GAO report I would read you one of their conclusions in this study that they did, they did say, finally, all those state laws differ significantly, in breadth and in detail, it is not clear that CCRC resident's in states with less stringent requirements are necessarily at greater risk then residents in heavily regulated states.

- **Peter Straub:** So one of the major differences, of course, would be that there's a bigger group of residents than there is individual insurance. If there is an insurance problem it might affect fewer people than a CCRC problem affecting all of its residents.
  - **Mr. Buyalos:** Some of the insurance companies are fairly large. It does affect even when Fidelity Bankers here in town failed, in 1981, it had two hundred thousand contract holders. I think I took calls from about half of them.
- **Ms. Jane Woods, Virginia Association of Area Agencies on Aging:** If you were going to wave a magic wand that would give you tools that perhaps you have seen in other states or you read about in the GAO report that you don't have today; what would be your top three?
  - **Mr. Buyalos**: That's a tough question. Like I said we have had these two cases and it has been a really unusual time, in fact, I don't see how the times could have been any worse for CCRCs things affecting there occupancy rates, but I am just a little leery to say what they might be. I mean I do acknowledge that we do regulate CCRCs at a less decree then we do insurers. We don't license CCRCs we actually register them, and the process is not as stringent as a new insurance company is coming into the state, as far as what they go through. I'm a little hesitant to make recommendations on that.
- **Mr. Herring:** If entrance fees were escrowed in a way that made allowance for in contacts were life care was involved for the provisions of health care and a payment of those health care needs going forward…
  - **Mr. Buyalos:** That's a really good question and we could certainly look into that for you and get back. So you are talking about some type of reserve that would have to be set up. I don't know all the ramifications of a CCRC having to do that and we could certainly look into that for you.
- **Mr. Herring:** Let me do a quick follow up question because and I will say this on my remarks a little bit later, that it is my opinion that we apparently have a lot of

I’m going to call rederrick about some of the problems about CCRCs. That leads me to the conclusion that what we need is some more objective independent research on some critical questions. For example, one of the things that when I got involved in this, one of the things that I look for was: what are the signals? How do we know in advance of financial stress or bankruptcy or both…How would we know what are the signals and what are the benchmarks that would tell us, that here is a danger point? And my personal assessment is that we don’t have enough good research that answers some critical questions in this industry. Would you agree or disagree or comment further on that?

  - **Ed Buyalos:** I think the primary tool right now is that audited financial statement. I mean even the notes to financial it’s a fairly good document and it does list in there when debt is coming due, the interest payments, if they are in compliance with loan covenants. So our primary tool is that audit report we get and I would think for residents that would have to be what they would go to try to keep abreast of the financial condition of their facility. I do know that some lenders even require quarterly financial filing, more so than even the states do.

- **Mr. Nelson:** Could you share with us any experience that you had in the return of entrance fees to states or to people who depart a CCRC, recognizing that there are really two varieties of CCRCs today one is life care, which if I can say kind of the old and good, and the new, which is the fee for service which is a little bit different? But what experience do you have either directly or through an ombudsman in regards to our concerns?
  - **Mr. Buyalos:** We are certainly aware that there have been CCRCs operating in Virginia that the returns of resident’s deposits have been delayed because new residents have not moved in. So I think there have been some expectations when residents leave that there would be a much quicker return to the refunds, and I think primarily because of the housing market there certainly have been some delays there.
- **Senator Barker**: Let me just jump in on one quick thing and then back to you. In those situations, has it been a situation where the contract said that they would get their money back when someone else made the entrance fees so it wasn’t that there was a violation of the contract it was that there was a delay in filling the unit?
  - **Mr**. **Nelson:** Yes, the real estate market, I think, has affected that. I guess a couple of clues that I’ve sensed from talking with other people is that if there is a bond issue or a financing type of issue and you see that the covenants are being changed generally, not pulled up, but pushed out, you probably have a good enough auditing clue.

- **Sen. Barker:** Let me follow up on a couple of questions that were asked. One was on a question of "the reserves" that Mr. Herring had raised directly related to life care communities that sort of have a contractual obligation to provide long term care services and other health care services etcetera. I note that on the chart that you had 23 states have that. Do you have any ideas as to how they determine what they do there, or is this, just sort of all over the map?
  - **Mr**. **Buyalos:** Different states do it different ways some reserves are I mentioned a certain amount of principal on interest payments expressed in a certain number of months, the way I interpret it is, like a year in advance you would have to have enough reserves set aside to satisfy the principal on interest payments next year. Most of these things are six months to a year from what I see some reserves are calculated as a percentage of deposits received from residents, some reserves are measured by cost of operation. I see that as being… you have to have enough reserve set aside to continue to operate the facility for six months. Some reserves are measured by entrance fee refund obligations. So they are all over the board.
- **Sen. Barker:** One of the other things that you mentioned was the [inaudible] studies and you talked about New York have a requirement every three years to have that type of analysis done, again, do you have any idea whether that has value or whether that is something that would produce some benefit?
  - **Ed Buyalos:** There is certainly cost that's associated with this…
- **Sen. Barker:** That is why I didn't want to pinch you with this.
  - **Mr. Buyalos:** Let's see, I would think, some lenders even require that to be done. I know New York requires it but it wouldn't surprise me at all that some lenders are already requiring it. Some states only require those documents if they are already prepared. So they don't make the CCRCs to go out and get the document but they do say if you have the document it must be filed with the department.
- **A. Prescott Rowe**, *Cedarfield Resident:* So far your presentation has quite rightfully been directed more toward the provider itself. What happens, in the case, at the Corporation Commission should a single resident or a group of residents come forward with either concerns, complaints, whatever; do you have the ability to handle those or do you handle them?
  - **Mr. Buyalos:** We have certainly had instances like that in the pasted. We have met with the residents, and with the residents groups. And then we have met with the companies, and we have tried to somewhat act as a mediator depending on the issues, but I don't think we could get involved between contract disputes, which is what a lot of them come down to, but

we certainly have met with both sides on different areas. But if it is some type of contract dispute I think we are prohibited from …

  - **Senator Barker:** From intervening, from getting involved in those situations then. You are prohibited from being able to get involved with those situations.
  - **Mr. Buyalos:** Right.

- **Sen**. Barker: Elizabeth could you talk about with the Common Interest Communities and what's been done in the last couple of years with the ombudsman and those types of things. For the members of the sub work group here, there is a sort of a precedence on how its been handle through the Housing Commission with some other situations that I think people might want to be aware of.
  - **Elizabeth Palen,** *VHC Director***:** The CIC Board was established through DPOR , approximately four years ago. The Board has an ombudsperson, who is an attorney, and she works to resolve complaints from residents of the CIC and managers of CICs. She may determine if the complaint deals with whether or not there has been a violation of the agreement that has been signed between the residents of that CCRC and the management association. If the issue involves something that is judge determinative, for example: if water poured through one unit and flooded the unit beneath it, the ombudsperson cannot determine who is at fault for that call. But the person can say my unit was flooded, and I went to the Board, and the Board refused to take any action. That is where the ombudsperson can step in and say well, according to your agreement, the management association is supposed to call a meeting of the Board; and if you disagree with it, you are supposed to have a series of things you can do to remedy the situation.
- **Senator Barker:** And that is what has been tried just in the last few years in the CIC so we do have a least a [inaudible] for having sort of done the type of thing that you were asking about there of having someone who's not dealing with financial side but sort of dealing with the relationship side of the two parties in those situations. Thank you, Elizabeth.
  - **Elizabeth Palen:** The CIC also has a Board at DPOR not the board of each CIC, but a board like the Real Estate Board that oversees all the different CICs and that Board confine each of the individual organizations if they are not for filling. They do the job that the SCC is doing; but they have a little bit more authority to go in and take disciplinary action against the organizations.
- **Senator Barker:** One other question I had, at our last meeting there was a little bit of discussion that often there is financial information that the residents get from the audit, etcetera, and it's done according to the county principals etcetera,

but that doesn't mean they can understand what all those figures are. Do you have any thought on how we might be able to provide something more user friendly to the residents?

- **Ed Buyalos**: You mean, require some type of standard format.
- **Sen. Barker:** Yes, I am leaving an open end to exactly what might work. The issue is that residents are receiving the information that is required to be provided, the financial information. It is done according to general county accounting principles, it is not that there is any problem with the information, it's just that someone who's not familiar with reading those reports and preparing them or whatever, in many instances, is going to say there are a lot of numbers here but they don't necessarily mean anything to me. How do I know my interests are being protected by reviewing this type of information and how might we make it something that is sought of more user friendly?
    - **Mr. Buyalos:** We can certainly think about that. I have been fairly impressed by some of the residents I met with down at the Bureau's ECPAs, retire CPAs that come in and they are quite knowledgeable when they come in with the reports but I can see were you are going, someway that would make it more user friendly the financials.
- **Sen. Barker:** The information is there. The information is done the way it's supposed to be done, it's provided to the residents and it's not that the facilities are trying to hide anything. It's just that it is not easy necessarily to interrupt it in some instances.
    - **Mr. Rowe:** It is further compounded in organizations that are consolidated into one entity. In the case of Cedarfield we can't determine by the information that we receive all of which we assure is legal. That is not the question that has been raised but exactly how are these fees determined; and what is included in the cost of care? And I am not an accountant. So my word is that it is all jumbled up there. And so you stand before 300 people in a meeting, and throw in all these numbers, to people who are 75, 80, and 90 years old and you expect them to understand; how come their fees went up, when there is just no explanation.
        - That is the issue of transparency and it is twofold. If you are a single organization the disclosure statement is much clearer. If you are a multiple organization, it is very hard to determine within the organization, which entity is doing what, and naturally you would be interested in your own. So that is an issue we feel that we have.
- **Mr**. **Herring:** Let me put a real face on that question of a lot of complex information in a single document like a disclosure statement. So if we look at that disclosure statement and we say to the average person who is going to enter a CCRC, and in particular the life care contract part, everything else is more simple

or a little bit easier to work with, but the complexities of a life care contract are extremely unique because the implications of a life care contract are daunting. When you think about it, so what we have are the daunting implications of a very complex document. Now, to pick up on what has been commented on; I talked with eight colleagues after they had been in their residency somewhere between a year and three years, eight of them. And the question I asked them was, retrospectively, do you believe that you really understood what was in that contract in that disclosure statement? And the answer was…No! And that personally defines one of the challenges.

  - My own take on this in conversations with administration has been maybe transparency isn't so much the answer, if one is committed to transparency; I am not so sure that transparency is the answer, and I want to suggest that maybe the answer is communication. How do you take complex information and break it down in ways that the average person who comes into a life care CCRC arrangement can understand what you are telling them? Most of the people I know in our CCRC are pretty bright. They are capable of understanding, but once you start moving them into the complexities of the kinds of documents and the implications we are talking about, it's not working.

- **Sen. Barker:** Well, we maybe follow up on these types of things. I think this is very good. Thank you very much.
- **Mr. Straub:** Just as a follow up to his question, you don't get involved in the management or decisions of management with the various CCRCs? If it isn't on the papers that you get in your forms, you are not too involved with it, are you?
  - **Ed Buyalos**: That's correct. Certain information has to be filed with us and we make sure that information comes in and we make sure that the information the resident's get is there; but we don't get involved with at all with the day-to-day management of the CCRC.
- **Mr. Straub:** And an issue that is apparently not wide spread within Virginia but is a topic of great discussion with VACCRA, you would not get involved with whether or not residents should be on their Board of Directors?
  - **Mr. Buyalos:** No, we won't get involved with that.
  - **Mr. Straub:** Then who would?
- **Sen. Barker**: If I might answer that the legislators is who would be involved with that type of thing. There is not power given to the SCC to be able to make those decisions. They are not in a position to decide one way or another.
- **Mr. Nelson:** My colleague down the way talked about the complexity for a life care. We are not in a life care for Windsor Meade we are a fee for service. I would tell you the same kind of store occurs with people who have just signed the contract to people who have been there for five or six years. You got to be not

only a CPA but done consolidate statements and be willing to take time to go from about 20 different pages to get even the definition of one of the categories there either call the reserve or even a liability. So, we have seen these black and yellow books they call them the *Financial Analysis of CCRCs for Dummies*, we need some help there; and if you could be of any help to us, some of us can help you or help some of the communication problems. You are quite right it is communication and understanding.

- **Sen. Barker:** Let me pick up on the last comment that Mr. Rowe had made a little bit ago talking about the financial reports for corporations that have multiple facilities and how that translates into the individual facility. There are a lot of hospitals are the Commonwealth that have multiple hospitals but yet they file individual statements on each of their hospitals in terms of their financial information with state agencies etcetera. What would be the implications of requiring at least some basic information on individual facilities to be file by corporations that have multiple facilities?
- **Mr. Janoski:** We do have a lot of the CCRCs that are in consolidated financial statement format, but then supplemental information the CPAs provide a break out of all the facilities in the back. I believe the issue with the Hermitage and Cedarfields they do not have that in their CPAs report. That is something their company can pay to have done. It is a supplemental section to their CPA report but a lot of our…
- **Sen. Barker**: So that's something that many of the CCRC companies do provide but not necessarily all the facilities.
- **Mr. Janoski**: And I will say this for example because its public knowledge; and I'm the analyst for Virginia Baptist Homes all of their facilities in the back of their CPA report are laid out separately so you could see each Lakewood Manor, Newport News all of those separately and then consolidating at the end.

III. VACCRA Recommendations

- **Mr. Ron Herring:** Affectionately or dis affectionately, depending upon your position, one of the greatest transformations on integrating a system that I have ever seen and it is working. Now, I find myself on the other end of this and it is quite different but these two ends of the spectrum that I have been affiliated with as an advocate had one thing in common they had vulnerability of the population group. They have that in common and I think if one tries to sift through all of the rederrick and all of the needs of all of the rest of that. The bottom line from my perspective is the need to do the very best we can to protect that vulnerability. These are vulnerable populations and that seems in my view and I have spent time on both ends of that spectrum, 55year's worth.

- My comments are going to be directed primarily at what I'm going to call sort of a national perspective because as I indicated, I am involved in a financial solemnize exercise by the national association with several others. It's not complete, yet, but we hope that it will be found useful in activity with the General Assembly not only in Virginia, but in other places.
    - The last comments I want to make about my comments are that these comments are related to not necessarily the facility that I live in but they are made in that context of some of the national issues that we are aware of, some of the similarities, and some of the differences that are occurring throughout the country.
    - Refer to his *SJR 40 Study Committee Remarks handout*.
- **Mr. Straub:** I might just point out that one more example of the wide disparity of the rules and governing rules of various CCRCs. Greenspring, of course, does repay the deposit from the sale of the unit to the successor, but there is a three month requirement, and if it is not done in three months then Greenspring will make that payment. So it is kind of a combination of relying on a new purchaser but with a timeframe.
    - Mr. Nelson: Let me just say, thank you, and I second your motion of what you have presented of what our need is and what our responsibility if within CCRCs, because when you think about it the residents are the only source of revenue.
    - Sen. Barker: Alright, Mr. High. Mr. High has been a long time leader and his background now is legislation.
- **Mr. George High,** *Westminster Resident*: I think Ron pretty much said it all. What I would say is that we see example, after example, after example of it. When you grew up in the 30s, and the 40s, not to mention in the 20s, if you are that old, your fear of old folk's homes is enormous. It was a place where people got out and sat and nodded as people came in, and maybe they woke up once in a while and maybe they didn't. There is a carry over these days with CCRCs as if everybody living there is close to being nodding and half a sleep out front of where ever they are living and that is not the case anymore.
    - There are lots of younger people in their last 60s, 70s and even in their 80s who are alert, who had very responsible positions in government, in the private industry, and just plan working, before they retired, who feel that they invested their money in these place. The CCRCs do what they do because of the money that we provide, as was just said, and they want to know what is going on. All too frequently things go on in the upper boardroom that don't get out to the residents, and we suddenly are

surprised and it maybe something rather minor and sometimes it's something that is more significant than that.
    - In the 1992 Department of Aging study, there is recommendation number seven urging for the creation of a state level CCRC committee to be studied. And that has been sort of sitting there now, for ten years; and it was more or less reiterated in the GAO study of 1993, all trying to deal with communication, transparency, and participation. We are not looking to give management a hard time. We are simply trying to participate with them in the management of the operation and we provide just that one person on the Board perhaps, we are trying to provide the input of a person who actually lives there and experiences what is going on.
    - We in NaCCRA have a very positive relationship with the leading age, the national organization for management of CCRCs we meet once a year alongside their meeting where ever it may be. So we got along just fine with them. I am afraid that we are disappointed that our relationship with VANHA is not as constructive as they are among the strong opponents of having us have any kind of representation at all on these boards, and we are disappointed because we really want to be constructive, we want to participate and we want to be helpful.
- **Mr. Rowe:** Being one of the younger one at 75 years old, I still have my mind. I will certainly support everything you just said and I think it is important. It is a new era, this is past the time when you didn't question to ask the doctor for a second opinion, and we do have rights; and we should be able to assert those rights. And the Commonwealth of Virginia should protect us of those rights and that is what I hope we can seek.
- **Mr. Herring:** One other comment, the consensus among a number of us who are working on the financial soundness issues is that the state of Florida has the best model for monitoring and intervening in financial stressed organizations. There are currently by some sources 30 CCRCs across the country that are in financial stress. Leading age has recently appointed a representative who can on call go to a CCRC and particularly its residents counsel at their request and help them begin to understand if they have issues that may lead to financial stress and or bankruptcy. That's now still going on and Florida seems to have the consensus of the [inaudible].
- **Sen**. **Barker:** Ed can you come back up here for just one second… when you were presenting and the rest of your staff there, one of the things that you talked about has a significant effect on the financial health facilities is the occupancy facilities. What type of information do you get on occupancy facilities? What types of perspective do you have for what a good range is for occupancy rates within the facilities and when it drops below a level do they start having any more

risk or exposure to financial difficultly and do you have any thoughts in terms of how we may address that particular issue?

  - **Mr**. **Janoski**: We don't currently receive occupancy information. It is not in the requirement of the Code. Some of the facilities providers include that information in their disclosure statement, but it is not a requirement.

- **Sen**. **Barker**: Do you have any census of sort of what levels of occupancy are healthy and when there is a risk that would be incurred?
  - **Mr**. **Buyalos:** I have a general sense from some that have had issues above 90 is certainly the comfortable range and down in the 70 percent you are going to have issues.
  - **Mr**. **Nelson:** The Windsor Meade model at least the [inaudible] studies were 95 percent and our management continually tells us when we get to 95 percent we will be able to provide what we told you we would. I guess the second comment I would share with you is that our apartments are over 90 percent, our villas, our free standing homes, are at 70 percent, so we average out at 80, and the gap between our revenue and our operating expenses is 39 percent. Yeah, if it is 95 percent with the kind of economy we have had in the past few years, you can't do it below 95 percent.
- **Sen. Barker:** You talked earlier about the two instances where you had bankruptcy issues there was a third one before 1985, before the law was passed, in Virginia. So it would have been prior to SCCs involvement in it. There was a life care community in Northern Virginia that got approval to build a second one and they had one in Alexander and they were developing one in Virginia at Fairfax and, basically, had fiscal problems, financial problems during the end of the construction period and the construction company took over operation of the facility and Jane being from Fairfax City she is well aware of it. It is just outside the line.
  - **Mr. Woods:** Yeah, but certainly I think that drove very many of the particulars within the law in 1985.
- **Sen. Barker:** Well, we did then have that issue and then actually the original facility in Alexander than later got taken over by another hospital corporation in Northern Virginia, but there was at least one other that sort of lead to some of the creations of what happened there in 1985.

IV. Public Comment

- **Sam Derieux**, *Residents' Council of Cedarfield*: I am a resident of Cedarfield. I am chairman of their Finance Committee and apparently a perpetual job for a CPA. For the quality of life in a continuing care community we need physical comfort and we need peace of mind. Physical comfort is based on the lodging, the food, health care. Physical comfort is based on the confidence that the residents have in its community, in its management and its govern board.

- So the latter is what I want to talk to you about. At Cedarfield we are in a unique position. We are one of six facilities in the parent corporation of Virginia United Methodist Homes of UNH. There is a seventh one which is Windsor Meade but it is separately incorporated. There are three points I would like to make. One is that in the not-for-profit organizations we the residents are the stakeholders and transparency is essential for the confidence that we could have in the facility and in its management and its board. I want to talk a little bit about resident fees and the ability to increase those fees, and thirdly, the need for direct interaction between the residents and the boards.
- Many of these things have been mentioned, here, but at Cederfield we do have the quarterly meetings as required. We get quarterly financial information. We get a balance sheet of the corporations of the United Methodist Homes and we get its operations compared to budget. We get Cedarfield's operation compared to budget.
- That is good information and we appreciate getting it but it just is not enough to satisfy our need. For example, we get no information about the disposition of the funds that are generated at Cedarfield whether it is used somewhere else in the corporate structure or not. We have been told "Cedarfield's fees are not conditioned on the needs of any other facility. We also know that prospective residents are being told that their fees will be based on costs at the community that is the term that they had used at Cedarfield. So anyway, I want to talk a little bit about being a stakeholder. At Cedarfield the entrance fees are range from $145,000 to 512,000 for the first resident. Second person 66,000; monthly fees are $2,327 to $5,182 plus $1,400 for a second resident.
- So those funds are generated and we believe that we should be entitled to know the disposition of those funds. The annual disclosure statement that has been mentioned earlier has audited financial statement it's a complete set: balance sheet, income statement, and cash flows. We never get a balance sheet of Cedarfield we have to ask for it. As a matter of fact, one time we specifically asked, what is the book value of the property plant equipment at Cedarfield? The answer: we don't give out that information. I would have thought that management and the board would want us to know how much is invested in Cedarfield but they simply will not do that
- The first question that I ever asked of management was a simple one: in the budget how do you determine the amount by which revenue should exceed expenses? I asked that seven years ago. I have not received an

answer. Section 38.2-4910 as Ms. Hepler mentioned, does call for free discussions and it says discussions of the facility not the overall corporation facility, our facility at Cedarfield. It says that they may include income, expenditures, and financial matters as they apply to the facility and other things that can be included. You've used the word it should include things that's our interpretation of the word. These things should be included in our discussions when we have these quarterly meetings. VMH and I think others have taken the position that it is optional, if it is optional on the part of the provider than those words are of no benefit what so ever to the residents. So one recommendation of ours is that either a regulation or legislation it should be made clear that option of including those subjects should be of the resident's option not the provider's option.

- Furthermore, the financial matter if we get to discussing those and they say, yes, we will do that, then, how far do we have to go to get a full free discussion of financial matters. It should include the facility assets and liabilities, in other words a balance sheet. The year-end financial sheets as I said, we are just in there with the others and we never see anything about our assets and liabilities; and as I said earlier, questions have been unanswered when we tried to receive the information that we want. So transparency, as it has been said earlier, is important and communication they are a part of the same issue. Communication is a means of being transparent.
- Now, our major concern is the compounding effect of monthly fee increases. We became particularly concerned about this in 2008 and 2009s budget. Our fees were raised four percent that year about five months later when we finally got the budget we found that operating expenses actually decreased by $300,000. Now, as you can imagine, I asked the question why had that been done this person is who no longer is with VMH she was the chief operating officer she said, our fees are competitive. Our residency agreement said, fees maybe increased and reflect increase in the cost of care. How do you determine what those fees should be if you have not determined what the cost of care is? We have been told that the cost of care not only includes what we see in the budget but it includes other factors. And, we have asked about those other factors and the definition has changed from time to time. One time they told us it includes future costs then I said, "if it includes future costs why are we being charged now with a 100 percent of the current costs weren't some of those paid within the last 15 or 16 years? We've tried to get them to tell us what is included, but if the fees are necessary then tell us why? So far, they have been

unwilling to do that and we have been trying for many months to discuss this with the President of VMH but we have not been able to schedule a meeting. And that is our primary concern.

- So our second recommendation is the provider should be required to give residents the actual computations of the application of any formula for fee increases. The Code does say that the SCC does have the authority to issue regulations so that is the reason that I am saying this will be done either by regulation or legislation, which ever you folks think is the best way to accomplish whatever it is you might recommend.
- The third point I would like to make is regulations with the governing boards, this has been referred to earlier, the residents of these CCRCs many of them has vast experience in business and professions. I know of one instance, a problem in management, and their consulting engineers couldn't solve it, so who solved it; a resident who was also an engineer. He told them what he thought should be done and it worked. Thank you very much. I appreciate your time, if you have any questions, I will be happy to answer any questions.

- **Mr. Kemp Philips:** *CFO of Virginia Baptist Homes*: You have heard Lakewood Manor and the Chesapeake and the Glebe mention today and Virginia Baptist Homes owns all of those. We do have an additional CCRC in Culpepper so that's who we are. I have been the CFO a couple years at Virginia Baptist Homes. I love the Commonwealth but by no means can represent expert on CCRC law in Virginia. Prior to my work at Virginia Baptist Homes, I was a consultant in the CCRC industry particularly in the not-for-profit CCRC industry for about 25 years. I worked in North Carolina, Florida and those are two states that a lot of people point to in terms of looking at regulation that might address some of the concerns of this subcommittee even then I don't hold myself out to be an expert in the industry.
  - CCRCs are very diverse; it's a very diverse industry, small but diverse. With respect to the regulations in Florida, my former boss was actually on the taskforce that helped to create Chapter 651which is the set of regulations in the state of Florida that dictate how CCRCs operate, if I may it's like our Chapter 49 on steroids. It is very, very onerous, in my personal opinion so onerous that it does have a negative effect in terms of entrance fees and monthly fees. I think in general monthly fees and entrance fees in Florida are relatively high given relative to other states. I would also suggest to the subcommittee to do a little bit of research and look at a particular community in Palm Beach Gardens in Florida at PGA National it is in foreclosure or to be in foreclosure it is a CCRC that has struggled for some time. I only bring that up to suggest that even with the

owner's regulations in place in the state of Florida, they are not immune to the same struggles that some of the other CCRCs in the nation have suffered.

- I did want to talk a little bit about how our audit works every year because I want to tie this back to a statement made by the Bureau of Insurance that the Commonwealth does not require the service of an actuary to satisfy the department's regulations. However, they do require an audit. In order for us to get an opinion for our audit every year we have to do something called future service obligation calculation.
- Let me back up one step and suggest that you are not alone in trying to tackle this issue that the AICPA has been grappling with this for some time. They came out with a statement of a position SOP-90-8, sometime in the late 80s.
- I apologize I don't know the exact timeframe and since then as updated that guidance but what that statement and what it really tells an operator like me is how to treat entrance fees in terms of revenue recognition and how to convince myself, the reader of the financial statement, the auditor, and the resident that we are in fact healthy looking out into the future. And the way looking into the future calculation works is that the actuary who we have to hire. It's not a requirement of the Bureau of Insurance but it really is truly a requirement for us to get the audit to issue that it is a requirement from the state. That actuary looks at our revenue stream out into the future and it looks at our expense stream out into the future and then that actuary makes a determination as to whether the present value of that future revenue stream is greater than the future value of that expense stream. If it is honky dory, everything is okay; if it is not, than we are required to book a deficiency on the balance sheet of any CCRC that shows a deficiency in its future service obligation.
- The intent to that is to give a negative conformation to the reader of the balance sheet. Hey there could be a problem in the future to the extent that that number is absent from the liability page of the balance sheet the CCRC has basically be blessed by the actuaries who last looked at it.
- The Glebe today and frankly it is the first CCRC that I have ever been associated with that actually has a deficiency on its balance sheet. Why does it have a deficiency on its balance sheet, primarily, because we can't accept entrance fees and I would back up and say that I think the Bureau of Insurance does a fantastic job. We have worked with Tony for some time they have been entirely appropriate and professional in our dealing with the Glebe as they have been with all of our CCRCs.

- We regret that they had to put a stay on our ability to collect entrance fees, but let me say this whether they foresaw this or whether anybody foresaw this, that actually turned out to be a good thing for us because it was that continuing that building pool of entrance fees that we could not collect that help us to formulate a plan of reorganization to get us out of bankruptcy. So in my humble opinion while we don't like it they did the right thing and they worked with us to really reach that stay after that and after that the plan was blessed by the court.
    - So, I wanted to talk about that FSO because you can talk about creating some reserves. The state of Florida and the state of North Carolina both require you to have reserves. To simplify it down to its, the easiest way to understand, both states basically require that after occupancies [inaudible] 80 percent is higher I think is what they call "state" generally. A CCRC is required to keep about six months' worth of operating expenses in a segregated account. Those monies can also be accounted for your reserve requirements, for your debt, generally looking at Virginia Baptist Home our requirements are debt requirements in terms of liquidity which are actually higher than what the state of North Carolina or the state of Florida would require of us if we were in those two states. So I would suggest that the fact that that mechanism is in place, the requirement to do this calculation every year that satisfies a lot of things.
    - I heard some of the commentary regarding rate increases. I think it is completely understandable to question why in any given year, if the facilities expenses have not increase, why have my monthly service fees increased? Well, the fiduciary responsibility of a CFO not to look at just next year, it's to look at the ability of the CCRC to exist in perpetuity and to suggest that my expense changes one year in relation to the resident rate increase in that one year defines everything it just is not an appropriate way to look at things. You have to look at the future service obligation calculation; you have to look at the expectation of where inflation affects may occur in future years. All of these issues come in to play when we talk about what the rate increase should be every year and of course there is a limiting factor of the market. Certainly, we have to listen to that as well. Senator those are my comments.
- **Mr. Rowe:** I have two comments one in determining your future expenses and budgeting and so forth, you talked about inflation and all that; do you ever consider that so same things impact your residents; while your fees go up the residents incomes probably steadily go down. Does that ever factor into your consideration?

    - Mr. Philips: It does, but the reality is we have to pay attention to the fact that we have to cover our expenses going forward. We have to estimate what those expenses are going to be, as you said, we only have one source of revenue and that is our residents.
    - I would tell you that we are a not for profit organization, of course, we are faith-based not for profit we have a pretty strong foundation and we take very, very seriously when we profile our residents when they move in. That we are in essence accepting assignments for them not legally or technically, but when we qualify a resident in terms of their ability to cover fees, you are right, we make certain expectations to what the inflationary environment is going to be like in the future and if we are wrong we have a foundation in place to help cover any gap.
- **Mr. Rowe**: My second question do I understand that you have a consolidated balance and all that that you offer?
    - **Mr. Philips:** We do.
- **Mr. Rowe:** But you do break it down by your entities?
    - **Mr. Philips:** We break it down by entities and of course, we have to submit a disclosure statement for each one of those entities.
- **Mr. Rowe:** Is that a complete disclosure of each entity, for example, Lakewood Manor is able to get its own financial report?
    - **Mr. Philips:** As was explained earlier, we have a consolidating audit but we have supplemental schedules as a part of that audit that gives an entity by entity balance sheet income statement…
- **Rowe**: And would they give the kinds of things those supplementary ones that we have been urging our particular entity to give; the detail sheets of how the fees are determined; you know, what goes into the cost of care? Is all of that included?
    - **Mr. Philips:** If you are asking whether there is a calculation in our disclosure statement that ties back to the rate increase, no. There is not such calculation.
- **Mr. Rowe:** So there is no rate looked at in the face of the competition, do you look at what all the others are doing?
    - **Mr. Philips**: To some extent, yes. It would be wrong for me to say, no, but all of these rate increases are occurring in real time, at the same time, and so we don’t know what the competition is doing until after they do it. We can see the history just like you can but our goal is to keep rates as low as we possibly can.
- **Sen. Barker**: I assume in terms of the separate statements you have for individual facilities part of the advantage of doing it the way you are doing it is that you don’t have to go through the whole auditing process of exactly how you are allocating funds across facilities when you are allocating overhead or expenses,

but that it does provide the basic information that would be on the statements that is available if the facilities were separately incorporated?

  - **Mr. Philips**: Yes. In that there is a separate income statement separate balance sheet which indicates a segregation of just the items relative to that community.

- **Senator Barker**: One other question…you said that there was some impact of the additional regulation and requirements associated with North Carolina and Florida upon entrance fees…do you have any ballpark as to what the magnitude to that type of thing would be? I think part of what we have to struggle with is that we want to make sure we're providing protections, but we don't want to impose a lot of additional cost which will get pasted on to most of the corporations and to the residents. So nobody wins in that situation, so.
  - **Mr. Philips:** I think more so in Florida than in North Carolina it's just my personal opinion, I am not prepared to quantify what the magnitude would be, but I've assisted in developing 4 CCRCs in the state of Florida and each time it's pretty remarkable the kind of interest carry and all of this comes back to interest carry because basically there is a huge requirement in the state of Florida you have to ask for 100 percent of the entrance fees until you get to 50 percent of the occupancy. So you cannot use any entrance fees for all of those operating losses which happens when you first open the doors and so you got to take on additional bond debt to cover that operating loss which creates incredible amounts of interest carry which has to be paid for by the residents. I can't quantify for you today, but that is the nature of the beast.
- **Mr. Herring**: I cut it out on my remark in the ones that I had printed but I had a question about a friend of mine who is an actuary and he made this statement to me and it was an e-mail statement, so I can share it and I would like your opinion on that statement regarding the use of actuary skills he made the following observations: accounts are concerned about CCRCs operating as a growing concern. Accounting auditors merely past judgment on what there management reporting follows a set of quasi legislative rules pertaining to the CCRC as an economic activity. Actuaries and some regulators, however, are concerned also with equitable interests of residents as well as the commitments the provider has made to them. Would you agree or disagree, and if you disagree in what way would you challenge that orientation?
  - **Mr. Philips**: I don't know, Mr. Herring, I don't know that it is appropriate to comment about that at this point. Honestly, I would like to think about that and respond to you.
- **Respondent**: Senator Barker and members of the committee, I just have a very short comment. Of all of the discussion today, we heard several references to

documents which pertain to state legislative efforts in relation to CCRCs. I did not hear a citation of the US Senate committee on Aging investigation of CCRCs from which a report was issued on 2012 recommending certain state elements of legislation so I think if that is not on the committees meeting list it should be added.

- **Sen. Barker**: Thank you all for participating and thank the members of the workgroup. I think this was very productive. We got a lot of things, and what we will try to do is synthetize that… work with staff and try to get information out to people prior to the next meeting; and we will set up a meeting probably sometime in October. Try to get that nailed down as quickly as we can and then put ourselves in a position to be able to move forward on things and make any decisions and recommendations, at that point. And, with that, if there is no further business, we shall rise. Thank you.

V. Adjourn

- Seeing that there were no further comments, the meeting was adjourned at 4:15 P.M.